

Health Professions Registration Act 2005

From 1 July 2007, VCAT will have jurisdiction under Part 4 of the *Health Professions Registration Act 2005* ('the HPR Act'). One of the key functions of the HPR Act is to protect the public by a system of registering health practitioners and holding investigations into the professional conduct, professional performance and the ability of registered health practitioners to practise. Those health practitioners covered under the HPR Act include:

- Chinese Medicine practitioners, including Chinese herbal dispensers and acupuncturists;
- Chiropractors;
- Dentists and registered dental care providers;
- Medical practitioners;
- Medical radiation practitioners including radiographers, nuclear medicine technologists and radiation therapists;
- Nurses;
- Optometrists;
- Osteopaths;
- Pharmacists;
- Physiotherapists;
- Podiatrists;
- Psychologists.

Each of these health professions will continue to be governed by their own responsible boards.

VCAT's Jurisdiction:

VCAT can exercise power under its 'original jurisdiction' and its 'review jurisdiction'.

Original Jurisdiction (Referrals):

In some circumstances, the relevant registration board (referred to in the HPR Act as the 'responsible board') **may** (and in some cases **must**) refer a matter to VCAT for determination.

Review Jurisdiction:

In other circumstances, an application may be made direct to VCAT for a review of a decision of the responsible board.

The parties who may initiate an application for review to VCAT can be either:

- a registered health practitioner;
- a student training for one of the health professions;
- where a decision is made by the **Pharmacy Board**, a person whose interests are affected by the decision (s.78(3), Part 6)

Which List at VCAT?

Referrals or applications for review can be made to the Occupational & Business Regulation List of VCAT from 1 July 2007 for matters arising under the new act.

What Forms do I use?

Referrals:

If a responsible board is referring a matter to VCAT, a letter setting out the details of the parties involved, identifying who has initiated the referral, the reason for the referral and the relevant section of the *Health Professions Registration Act 2005* will normally be sufficient. VCAT has drafted an example of a referral letter that can be used by the responsible boards. Any relevant supporting documentation can also be enclosed keeping in mind that the VCAT file is a public document unless and until an order is made by VCAT restricting access to the file.

Application for Review:

Applicants can lodge an application for review form (form 2) which can be downloaded from the VCAT web-site (www.vcat.vic.gov.au) or obtained from the VCAT registry by ringing 9628 9755.

Is there a lodgement fee?

Application for Review:

The fee from 1 July 2007 is \$283.20.

An application can be made to waive the lodgement fee if it can be shown that payment of the fee will cause financial hardship. See the VCAT web-site for details of how to apply for a fee waiver or ring 9628 9755 for information.

There is an Occupational & Business Regulation List Information sheet on the VCAT web-site which details how applications for review are progressed in the List.

Summary of VCAT's Jurisdiction:

Below is a summary of the various provisions in the *Health Professions Registration Act 2005* which give jurisdiction to VCAT.

Original Jurisdiction (Referrals) (Parts 1, 2, 3 & 4 of the *Health Professions Registration Act 2005*)

Section 19 – The Responsible Board (RB) **must** refer a matter to VCAT if it believes that:

- the registration of a health practitioner has been obtained by fraud or misrepresentation; or
- the registration of a student has been obtained by fraud or misrepresentation; or
- the qualifications upon which the health practitioner relied for registration or endorsement have been withdrawn.

Section 46 – The RB **may** refer a matter to VCAT, with or without first conducting an investigation.

Section 53 – The RB **may** refer a matter to VCAT if a health practitioner or student who is the subject of an investigation does not agree to undertake a health assessment or does not abide by an agreement to undergo a health assessment.

Section 57 – The RB **may** refer a matter to VCAT if the health practitioner who is the subject of an investigation does not agree to undertake a performance assessment or does not abide by an agreement to undergo a performance assessment.

Section 59 – The RB **may** refer a matter to VCAT following the investigation of either a health practitioner or a student.

Section 60(5) – An Investigation Review Panel **may** ask the RB to refer a matter to VCAT.

Section 62(2) – A health practitioner **may** choose to have their matter heard by VCAT instead of being heard by either a Professional Standards Panel or a Health Panel.

Section 63(2) – A Professional Standards Panel (a Panel) (through the RB under s.76) **may** refer a matter to VCAT where it finds a health practitioner has engaged in unprofessional conduct or professional misconduct or whose performance is unsatisfactory.

Section 64 – A Panel (through the RB under s.76) **must** refer a matter involving a health practitioner's professional performance or conduct to VCAT if there is a reasonable likelihood that VCAT will find that:

- the health practitioner has engaged in professional misconduct, or
- the health practitioner's ability to practice is affected to the extent that cancellation of registration may be warranted.

Section 68(2) - The Panel (through the RB under s.76) **must** refer a matter to VCAT if the Panel believes a health practitioner's ability to practise is affected to the extent it is reasonably likely VCAT may decide to cancel the practitioner's registration.

Section 68(3) - The Panel (through the RB under s.76) may refer a matter involving a registered student's ability to undertake clinical training to VCAT if the Panel is of the opinion that VCAT is likely to cancel or suspend the student's registration.

Section 70(1) – The Panel (through the RB under s.76) **must** refer a matter to VCAT if (before the end of a hearing) if the health practitioner or student requests a VCAT hearing or if the Panel believes a VCAT hearing should be held.

Sections 70(2) - The Panel (through the RB under s.76) may refer a matter to VCAT if a health practitioner or student fails to attend a hearing before the Panel.

Section 76(1) – Where a matter may or must be referred to VCAT, the RB is to refer the matter to VCAT in accordance with Division 1 of the Health Professions Registration Act.

Review Jurisdiction (Part 4, Division 2 of the *Health Professions Registration Act 2005*)

Section 71 – When a Health Panel hearing is completed, the health practitioner or student may apply to VCAT to review any findings and determinations of the panel hearing.

Section 76(2) – The RB may apply to VCAT for an order under Division 1 in respect of a health practitioner if the RB believes the health practitioner is not of good character.

Sections 76(3) – The RB **must** apply to VCAT for an order under Division 1 in respect of a student if the RB believes there is a reasonable likelihood that VCAT will find the student's suitability to undergo training is affected because the student has been charged, convicted or found guilty of an indictable offence.

Section 78 (1) – a health practitioner who is the subject of a relevant decision, finding or determination may apply to VCAT for review of:

- A decision to refuse an application for registration or renewal of registration;
- A decision to refuse an application for endorsement of registration or renewal of endorsement;
- A decision to impose a condition on registration or endorsement of registration;
- A decision to cancel interim registration;
- A finding or determination made at a panel hearing under Part 3;
- A decision to suspend the registration of a health practitioner, if the Responsible Board (RB) has not instituted an investigation within a reasonable time after suspending the registration;
- A decision to accept an agreement by the practitioner to alter the way he or she practices, if the RB has not instituted an investigation within a reasonable time after accepting the agreement.

Section 78 (2) - a student whose interests are affected by the relevant decision, finding or determination may apply to VCAT for review of:

- A decision to refuse a student's application for registration or renewal of registration;
- A decision to impose a condition on a student's registration otherwise than by agreement;
- A finding or determination made at a health panel hearing under Part 3;
- A decision to suspend the registration of a student, if the RB has not instituted an investigation into the ability of the student to undertake clinical training within a reasonable time after suspending the registration;
- A decision under s.40 to accept an agreement by a student to alter the way he or she undertakes clinical training, if the RB has not instituted an investigation within a reasonable time after accepting the agreement.

Section 78 (3) – With respect to a decision of the **Pharmacy Board**, a person whose interests are affected by the relevant decision, finding or determination may apply to VCAT for review of a decision refusing, imposing conditions upon or revoking a **pharmacy approval** under Part 6.